

STATE OF MAINE  
BEFORE THE GRIEVANCE COMMISSION

FILE NO. 90-S-28

BOARD OF OVERSEERS OF THE BAR,	)	
	)	
vs.	)	REPORT OF FINDINGS AND
	)	CONCLUSIONS OF PANEL A
	)	OF THE GRIEVANCE
PHILIP K. JORDAN,	)	COMMISSION

This matter came on for hearing on the Petition of the Board of Overseers of the Bar on April 25, 1991, at the Penobscot County Courthouse, Probate Courtroom, in Bangor, Maine, before Panel A<sup>1</sup> of the Grievance Commission. The Board of Overseers of the Bar was represented by temporary Assistant Bar Counsel Jeanne A. Foy and the Respondent Philip K. Jordan, appeared personally and was represented by Kevin M. Cuddy. Bar Counsel presented the testimony of Leigh Dow and Carol Heckert. Respondent testified on his own behalf and presented two witnesses, Attorney Gary Severson and Andrew Moores. All the witnesses were sworn. Eleven (11) exhibits were admitted on behalf of the Board (Exhibits 1 through 10 and 13) and three exhibits were admitted on behalf of the Respondent.

Prior to the hearing, Respondent's counsel noted his objections to the hearing in that Respondent was not present at the review of the Complaint in order to present his position in opposition to the public nature of the hearing and also on the ground that there was an inadequate investigation. Inasmuch as the procedures followed in this case were in accordance with the Bar Rules, the objections are overruled.

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<sup>1</sup>Carroll Lee substituting for Lawrence Hadley.

### FINDINGS OF FACT

(1) At all times relevant hereto, Respondent, Philip K. Jordan of Houlton, Maine, was an attorney duly admitted to and engaged in the practice of law within the State of Maine. Respondent has practiced since 1972 and at the time of the hearing, approximately 90% of his time was devoted to matters connected with real estate. At the time of the conduct complained of, Respondent's practice was 75%-80% concentrated on real estate work.

(2) In early May, 1988, Complainant Leigh Dow entered into an agreement for the purchase of certain real estate on Military Road in Houlton, Maine. The Purchase and Sales Agreement (Exhibits 5a and 5b) described the property as being on the north and south side of the Military Road in Houlton, Maine.

(3) Through the real estate broker, Andrew Moores, Respondent was engaged to represent Mr. Dow and also the Seller in connection with the sale. (Respondent also ended up representing Barco Federal Credit Union, Buyer's lender).

(4) The first time that Mr. Dow had any contact with Respondent was at the closing. The closing was attended by Mr. Dow, his girlfriend Carol Heckert, Respondent and Andrew Moores. The closing was scheduled on a "hurried up basis"<sup>2</sup> on the morning it actually took place. It was at that time Mr. Dow was informed Respondent was representing both him and the Seller and he was asked to sign a multiple employment disclosure form (Board

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<sup>2</sup>As testified to by Mr. Moores and confirmed by the other parties.

Exhibit 6) which he did. The form purported to authorize Respondent to represent multiple parties (the Buyer and Seller) and provided that if Respondent believed that his judgment would be compromised as a result of this multiple representation, he would notify the parties and would withdraw. There was no discussion of the implications or dangers of such multiple representation.

(5) Respondent prepared an Abstract of Title prior to the closing. In the course of researching the title and preparing the Abstract, Respondent learned that the property on the south side of Military Road had previously been conveyed out to the State of Maine and was not owned by the Seller. Respondent was aware that this was in conflict with the description in the Purchase and Sales Agreement.

(6) Respondent did not inform Mr. Dow that the property on the south side of Military Road had previously been conveyed out and when Mr. Dow purchased the property, he was under the impression that he was receiving title to that property. The broker, Mr. Moores, was aware that the property on the south side of Military Road was a factor in Mr. Dow's decision to purchase the property.

(7) Almost a year later, Mr. Dow learned he had not acquired title to the property on the south side of Military Road when the State of Maine starting doing survey work on the property. Mr. Dow then had a meeting with Respondent during which Respondent confirmed that he (Dow) did not acquire title to that piece of property.

(8) Mr. Dow had intended to establish a mobile vending business on the parcel of land located on the south side of the Military Road and has suffered damages as a result of the fact that he does not own that parcel.

#### CONCLUSIONS AND DETERMINATION OF THE PANEL

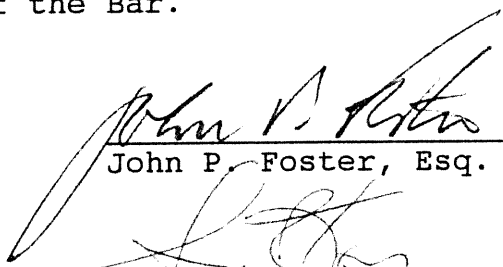
This case has proved a difficult one for the Panel to decide. The Panel does not doubt that Respondent is a capable and experienced attorney whose practice centers on matters involving real estate. If Respondent had not realized that the prior deed to the State of Maine did, in fact, convey the property on the south side of the Military Road to the State of Maine, his conduct might have been negligent, but probably would not have amounted to a violation of the Bar Rules. However, Respondent was very clear in his recollection that he knew prior to the closing that that property had been previously conveyed out. He also testified that he knew that this created a variance with the description of the property in the Purchase and Sales Agreement which clearly specified the property as bordering on the north and south side of Military Road. Respondent, therefore, had a duty to alert the Buyer that he was not purchasing the property as described in the Agreement.

Rule 3.4(c) provides that "(a) lawyer shall not continue multiple employment if the exercise of the lawyer's independent professional judgment on behalf of a client will be, or is likely to be, adversely affected by the lawyer's representation of another client." Rule 3.4(d) allows a lawyer to represent multiple clients if it is "obvious" that the lawyer can represent

the interests of each and if each consents to the representation after full disclosure of the possible effect of such representation on the lawyers exercise of the lawyer's independent professional judgment on behalf of each. When Respondent learned that the south parcel had been previously conveyed out, it was not obvious that he could continue to represent both Buyer and Seller. Further, Respondent never made full disclosure as required by that Rule. It should also be pointed out that making full disclosure of such multiple employment for the first time at closing is less than optimal. If a client really did have an objection, he would hardly be encouraged to voice it if it would result in a delay of the closing and, thereby, possibly the loss of the sale (or purchase).

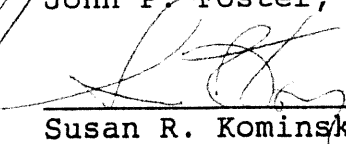
The Panel concludes that the Respondent has violated Rule 3.4(c) of the Maine Bar Rules and that a reprimand is warranted. The Respondent is hereby reprimanded and Bar Counsel is directed to forward a copy of this Report to him forthwith and to file it with the Board of Overseers of the Bar.

DATED: June 26, 1991



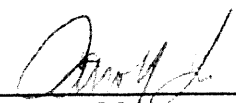
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John P. Foster, Esq.



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Susan R. Kominsky, Esq.



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Carroll Lee